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## Chapter 21.54 – Permit Implementation, Time Limits, and Extensions

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### Sections:

21.54.010	Purpose
21.54.020	Use of Property
21.54.030	Effective Date of Permits; Notice of Final Action
21.54.040	Applications Deemed Approved
21.54.050	Performance Guarantees
21.54.060	Time Limits and Extensions
21.54.070	Changes to an Approved Project
21.54.080	Resubmittals
21.54.090	Covenants

### 21.54.010 – Purpose

This chapter provides requirements for the implementation or “exercising” of permits listed in Table 5-1 and other approvals that are granted or issued in compliance with this Implementation Plan, including time limits and procedures for granting extensions of time.

### 21.54.020 Use of Property

Required construction permits (e.g., building, grading, and other construction permits) may be issued following the effective date of the permit in compliance with Section 21.54.030.

- A. **Compliance Required.** Grading shall not be commenced and no structure shall be altered, enlarged, erected, moved, or rebuilt subject to the provisions of this part, except in compliance with the approved permit and associated conditions.
- B. **Director’s Determination.** Conformity shall be determined by the Director or, in the case of disagreement with the applicant, by the applicable review authority.

### 21.54.030 – Effective Date of Permits; Notice of Final Action

- A. **Effective Date.** The approval of any permit for a project that is appealable to the Coastal Commission shall become effective upon the expiration of the Coastal Commission's 10-working-day appeal period that begins the day after the receipt by the office of the California Coastal Commission of the City's Notice of Final Local Action, and where no appeal of the review authority's action has been filed by 2 Coastal Commissioners, the applicant, or any aggrieved person in compliance with the Coastal Act.
- B. **Notice of Final Action.** Final City action on permits for sites located within the City's Coastal Zone shall be documented by the Notice of Final Local Action which the City sends to the Coastal Commission.

#### **21.54.040 Applications Deemed Approved**

A permit application that is deemed approved by operation of law shall be subject to all applicable provisions of this Implementation Plan, which shall be satisfied by the applicant before a building or grading permit is issued or a use not requiring a building permit is established.

#### **21.54.050 Performance Guarantees**

##### **A. Deposit of Security.**

1. If the review authority finds that the issuance of a permit or other approval is reasonably likely to have a direct adverse impact on the health, safety, or welfare of the public if the condition(s) is not performed, the review authority may impose, as a condition of approval, a requirement that the applicant deposit security in an amount sufficient to ensure the faithful performance of the condition(s).
2. The security shall be in the form of cash, a certified or cashier's check, or a performance bond. If the applicant elects to fulfill the condition by providing a performance bond, the performance bond shall be issued by a surety currently authorized by the Insurance Commissioner to transact business in the State of California. The surety shall be of a financial size and have a financial rating acceptable to the City's Risk Manager. The form of the performance bond shall be subject to approval by the City Attorney.
3. The security shall remain in effect until all of the secured conditions have been performed to the satisfaction of the Director.
4. Security required in compliance with this section shall be payable to the City.

##### **B. Release of Security.** Upon satisfactory compliance with all applicable provisions of this section, the security deposit shall be released.

##### **C. Failure to Comply.**

1. Upon failure to perform any secured condition in a timely manner, the City may execute the condition, or cause it to be done, and may collect from the applicant, and surety in case of a bond, all costs incurred, including administrative, engineering, legal, and inspection costs.
2. The unused portion of the security, if any, shall be refunded to the applicant after deduction of the costs recoverable by the City.

##### **D. Appeal.** The Director's determinations under this section may be appealed to the Council by the applicant by filing an appeal with the City Clerk within fourteen (14) days after the decision in compliance with Chapter 21.64 (Appeals).

## **21.54.060 – Time Limits and Extensions**

### **A. Time Limits.**

1. Unless a condition of approval or other provision of this Implementation Plan establishes a different time limit, any permit or approval not exercised within twenty-four (24) months from the actual date of review authority approval shall expire and become void, except where an extension of time is approved in compliance with subsection (B) of this section.
2. The permit shall not be deemed “exercised” until at least one of the following has first occurred:
  - a. A grading permit has been issued and grading has been substantially completed;
  - b. A building permit has been issued and construction has commenced, and has continued to maintain a valid building permit by making satisfactory progress as determined by the Building Official;
  - c. A certificate of occupancy has been issued;
  - d. The use is established; or
  - e. A time extension has been granted in compliance with subsection (B) of this section.
3. In cases where a coastal development permit is required, the twenty-four (24) month time limit shall not begin until the effective date of approval of the coastal development permit.
4. If a project is to be developed in preapproved phases, each subsequent phase shall be exercised within twenty-four (24) months from the date that the previous phase was exercised, unless otherwise specified in the permit, or the permit shall expire and become void, except where an extension of time is approved in compliance with subsection (B) of this section.
5. If the project also involves the approval of a tentative map, the phasing shall be consistent with the tentative map and the permit shall be exercised before the expiration of the tentative map, or the permit shall expire and become void and of no further effect.
6. Once exercised, any use that has been abandoned for at least one hundred eighty (180) days or changed shall be deemed void.

- B. Extensions of Time.** Upon written request by the applicant, the Director, or the Commission under a referral or appeal, may extend the time for an approved permit or approval to be exercised.

1. **Filing and Review of Request.** The applicant shall file a written request for an extension of time with the Department no less than thirty (30) days or more than ninety (90) days before the expiration date of the permit, together with the filing fee required by the City's fee schedule adopted by resolution.
  2. **Action on Extension Request.** A permit or approval may be extended for no more than three additional twelve (12) month periods beyond the expiration of the original approval; provided, the Director, or the Commission under a referral or appeal, first finds that there have been no changes in the conditions or circumstances of the site or project so that there would have been grounds for denial of the original project.
- C. **Effect of Expiration.** After the expiration of a permit or approval in compliance with subsection (A) of this section (Time Limits), no further work shall be done on the site and no further use of the site shall occur until a new permit or approval and any required building permit or other City permits or approvals are first obtained.

#### **21.54.070 – Changes to an Approved Project**

Development or a new use authorized through a permit granted in compliance with this Implementation Plan shall be established only as approved by the review authority, and in compliance with any conditions of approval, except where a change to the project is approved in compliance with this section.

- A. **Application.** An applicant shall request a proposed change in writing, and shall also furnish appropriate supporting information and materials explaining the reasons for the request.
- B. **Minor Changes Approved by the Director Without a Public Hearing.**
1. The Director may authorize minor changes to an approved site plan, architecture, or the nature of the approved use, without a public hearing, where the Director first finds that the changes:
    - a. Are consistent with all applicable provisions of this Implementation Plan;
    - b. Do not involve a feature of the project that was a basis for or subject of findings or exemptions in a negative declaration or Environmental Impact Report for the project;
    - c. Do not involve a feature of the project that was specifically addressed or was the subject of a condition(s) of approval for the project or that was a specific consideration by the applicable review authority in the project approval; and
    - d. Do not result in an expansion or change in operational characteristics of the use.
  2. The Director may choose to refer any requested change to the original review authority for review and final action.

- C. **Changes Approved by Original Review Authority.** A proposed change that does not comply with the criteria identified in subsection (B) of this section (Minor Changes Approved by the Director Without a Public Hearing) may only be approved by the original review authority for the project through a new permit application filed and processed in compliance with Chapter 21.50 (Permit Application Filing and Processing) and the applicable provisions of Chapter 21.52 (Permit Review Procedures).

#### **21.54.080 – Resubmittals**

- A. **Resubmittal after Denial with Prejudice.** For a period of twelve (12) months following the actual date of denial with prejudice by the applicable review authority, or, if appealed, the actual date of denial by the applicable review authority considering the appeal, of a coastal development permit or amendment, no application for the same or substantially similar permit or amendment shall be filed for the same site, or any portion thereof.
- B. **Exception to Subsection (A) of this Section.** The Director may allow exception to subsection (A) of this section based on one or more of the following findings:
1. New evidence material to a revised decision will be presented that was unavailable or unknown to the applicant at the previous hearing(s) and that could not have been discovered in the exercise of reasonable diligence by the applicant.
  2. There has been a substantial and permanent change of circumstances since the previous hearing(s), that materially affects the applicant's real property.
  3. A mistake was made at the previous hearing(s) that was a material factor in the denial(s) of the previous application.
- C. **Resubmittal after Denial without Prejudice.** There shall be no limitation on subsequent applications for a site where a project was denied without prejudice.
- D. **Director's Determination—Appeal.**
1. The Director shall determine whether a new application is for a permit or amendment that is the same or substantially similar to a previously approved or denied permit or amendment, and shall either process or reject the application in compliance with this section.
  2. The Director's determination may be appealed to the Commission, in compliance with Chapter 21.64 (Appeals).

#### **21.54.090 – Covenants**

- A. **Applicability.** When necessary to achieve the land use goals and policies of the General Plan, the City may require a property owner to record a covenant and/or other limitation(s) in favor of the City. A covenant:
1. May be required to provide for necessary emergency access, landscaping, light and air access, open space, parking, public view protection, shoreline and bluff-top

access, solar access, resource protection, etc., or limitation(s) or restriction(s) on the use of property as a result of a project approval; and

2. Shall be imposed as a condition of approval by the review authority.

B. **Form of Covenant.** The form of the covenant shall be approved by the City Attorney, and the covenant shall:

1. Describe the real property to be benefited by the covenant;
2. Identify the City permit or approval that relied on or required the covenant; and
3. Identify the purposes of the covenant.

C. **Recordation.** A covenant shall be recorded in the County Recorder's Office.

D. **Effect of Covenant.**

1. From and after the time of its recordation, a covenant shall provide notice to all persons to the extent afforded by the recording laws of the State.
2. The burdens of the covenant shall be binding on, and the covenant shall benefit all successors-in-interest to the real property.

E. **Enforceability.** A covenant shall be enforceable by the successors-in-interest to the real property affected by the covenant, and the City. This section shall not create standing in any person, other than the City, and any owner of the real property affected by the covenant, to enforce or to challenge the covenant or any requested amendment or release.

F. **Release of Covenant.** A covenant may be released by the Director, or by another appropriate review authority in the event of an appeal, at the request of any affected person, including the City.

1. **Process for Release.** The release of a covenant shall require that the review authority first:
  - a. Conduct a noticed public hearing in compliance with Chapter 21.62 (Public Hearings); and
  - b. Find that the covenant on the site is no longer necessary to achieve the land use goals of the City.
2. **Recordation.** A notice of the release of the covenant shall be recorded by the Director in the County Recorder's Office.
3. **Fees.** The applicant for a release of a covenant shall pay the fee for the processing of the release in compliance with the City's fee schedule adopted by resolution.